

*Irland vol 14*

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**CONSIDERATIONS,**

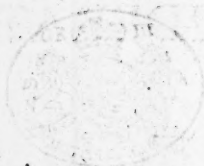
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(PRICE SIXPENCE.)

H. Cary (C. J.)

5th Viscount Falkland



# CONSIDERATIONS

ON THE

COMPETENCY

OF THE

PARLIAMENT OF IRELAND

TO ACCEDE TO AN

U N I O N

WITH

GREAT BRITAIN.

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BY THE

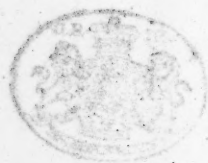
RIGHT HON. CHARLES, VISCOUNT FALKLAND.

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1799.





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THE following pages merely contain those arguments which have occurred to the Author's mind, upon the subject, during a short absence from his professional duties; and are published without any attempt or wish, on his part, to make use of the embellishments or ornaments of language which are often attendant upon publications of this description. His wish is brevity, and he is not sure that, from having pursued that method which is most likely to accomplish such wish, the publication will be the less acceptable to his readers.

1841  
The following table shows the  
number of persons who have  
been admitted to the  
hospital since the 1st of  
January 1841. It is divided  
into two parts, the first  
showing the number of  
persons who have been  
admitted to the hospital  
since the 1st of January  
1841, and the second  
showing the number of  
persons who have been  
admitted to the hospital  
since the 1st of January  
1841.

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## CONSIDERATIONS, &c.

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I CANNOT help thinking it a matter of great surprize, that the opposers of the Union should attempt to argue its rejection upon the principle of a deficiency in the powers of Parliament to assent to it.

It appears to me astonishing, that those persons who have hitherto been in the habits of exerting their oratorical powers in panegerising the Constitution of this Country, and who have attempted to found

their general opposition to the measures of the present Administration upon constitutional arguments, should upon this question adduce those which, if allowed, would go to the subversion of that Constitution they so much affect to admire, and which it is not only their interest but their duty to support. Can such men be conscious, that at the time they are supporting an opposition to the proposed measure of a Legislative Union between Great Britain and Ireland upon such grounds, that in the very principles of that opposition are contained the seeds of that baneful system of anarchy which has already overrun a great part of Europe, and which they have agreed in pronouncing the most destructive mania that ever assailed the liberties of mankind?—Are they aware, that in such a support they are furthering the views of the enemies of both Countries?—that they are assisting the schemes of those who wish to divide them?



—and that they become parties in abetting that system which organized the rebellion in Ireland as a last grand effort towards the subversion of the liberties of Europe? but which, I trust, will never be successful; for I feel confident that the good sense of both Countries will interfere, to counteract such machinations, with as much effect as their united valour has already produced in triumphing over the avowed plans of their mutual enemies.

In the following very short view of the subject, I shall endeavour to prove, that the Parliament of Ireland has, constitutionally, the right of acceding to the proposed Union; and I must beg it to be understood that I am not entering into a discussion of the merits of the principles on which the Constitution is founded, but that I am only attempting, by arguments derived from that Constitution as it now stands, to prove that the Parlia-

ment (by which I always mean the Three Estates acting in unison) has that right vested in it.

If Parliament has not the right of deciding upon all questions whatever, where does that right of decision stop?—and who are to be the judges of what questions it has a right to decide upon? If I am answered that the People possess that right, I must inquire how their opinions can be collected, and what constitutional method can be adopted to obtain their determination on the subject. Or, if it is asserted that the People have a right to demand a new election upon *any* question, that they may express their opinions by their representatives, I must confess that I cannot conceive such a doctrine to be constitutional, as it is impossible to reconcile it with the power of dissolution vested in the Crown by the Constitution. How can it then be maintained,

that the People have any right of interference, but through the medium of the House of Commons, as it is at the time?— Shall I be told that the collected populace of the Country have the right of determining the propriety and extent of the rights of Parliament? or, that they have the right of prescribing the periods proper for themselves to be consulted by the Legislature of the Kingdom? For this is evident, that, if the rights of Parliament are limited, the right of limitation must be placed somewhere; and, wherever it is placed, a right, paramount to that of Parliament, is also placed with it. Therefore, if you place it in the People, you make the People paramount to Parliament, and your government becomes a Democracy.

When a Member is elected to sit in Parliament, his constituents confer upon him, not only the Guardianship of their Rights,



but an unlimited confidence and independent authority. For though it is true that he obtains his seat in Parliament in consequence of their election, yet the moment such election has taken place, he has the power of exercising his judgement without control, and without being amenable to any one whatever in that exercise.—The right of Election is given to the People, that they may chuse such persons as they may deem sufficiently worthy of confidence, to have such a trust reposed in them, and not for the purpose of electing one, who is only to be their mouth-piece, and whom they have the power of bringing to an account for his conduct. For, were Elections intended for this purpose, a power would also have been attached to the Constituents, to deprive at their pleasure the person elected of his trust, and to appoint another, who would be more likely to act as they should dictate; of what use would it be to them,

to have the right of declaring that they were displeased with the conduct of their Representative, if they could not remove him; and if he remains in the House of Commons to give his opinion, although it be perfectly inimical to their sentiments, until the Parliament either expires or is dissolved.

The right of Petitioning is certainly vested in the People by the Constitution, and confirmed by the Bill of Rights; but that does not prove that their representatives are not perfectly independent of them. But, on the contrary, though they have the right of laying either their wants or grievances before their representatives, yet that those representatives have the power of determining upon them by rejection, and such determination is final; nay more, the House may even refuse to take such petition into consideration. — Now, if the Constitution had considered the representatives in any way

dependent upon their Constituents, it would have given the right of Remonstrance and Dictation to the latter.

As no act of Parliament would be invalid merely because it was passed in direct opposition to the opinions and directions of the Constituents of the House of Commons, but as, on the contrary, if it passed through the forms prescribed by the Constitution, and received the sanction of a majority in both Houses of Parliament, and that of the Crown, such act of Parliament would be binding on those Constituents themselves; so it is evident that the Constitution, by furnishing no remedy for such an event, tacitly implies that independence of the Representatives, which I am endeavouring to prove, does exist.— An independence which I cannot help thinking beneficial to the Constituents themselves, for it certainly tends to enhance the value of the trust which is to be reposed in those

electd, and the value of that trust will certainly act upon the minds of those who have the power of conferring it, in a certain degree, to urge them to elect persons who, feeling an interest in the proper execution of that trust, will be the least likely to betray it.—I am aware, that it is the duty of a Member of Parliament to study the local interests of his Constituents when they do not interfere with the general welfare ; but as any Member has also the right of proposing any measure, which may only relate to the interests of the Constituents of another Member, so it follows that such duty is in fact general, and only considered particular from the supposition of better information on the subject ; and therefore it is no argument against the independence of the Representative.

The very existence of the Constitution of these Countries is, as I have before stated,



materially involved in the discussion of this question; for the Bill of Rights, that second Grand Charter of the Constitutional Liberties of the Subject, must be infringed, and its intentions subverted, by those who maintain that the Irish Parliament is not competent to accede to the proposed Union.

If two branches of the Legislature have the power of determining in a case, of a description so delicate as that of establishing the Right of the other Branch to exercise the functions which, by the Constitution of these Realms, are attached to it, I should conceive it nearly impossible, with any shew of reason, to dispute the power of the Three Estates, acting in unison, to make such alteration in the representation as they may deem proper. — Is it not evident, that two branches of the Legislature conceived themselves competent to such a task, by the tender of the Crown to King William and Queen Mary?

And that, in that very tender, they assumed a power which is more extensive than it is necessary the Three Estates should possess, to be competent to accept or decree the Union between Great Britain and Ireland.

I am aware that I may, in reply to this statement, be told, that that was an instance of an extraordinary description ; and I am also conscious that it may be argued, that a Parliament was then elected for the express purpose of furnishing a remedy. — Is not the present state of Ireland, marked as it is to be goaded by the paracidal and destructive instruments, which the various contending interests of Protestants, Catholics, Rebels, Republicans, and Invaders furnish ; groaning as it is under the concomitant evils of poverty and discontent, and weltering in the blood of rebellion ; I ask, is not a Country in such

a state, placed in a situation that calls for extraordinary remedies, if any can?

Although, in the case of the Third Estate being wanting, it was deemed necessary to have a Parliament elected for the express purpose of deciding upon the remedy, yet, that by no means proves, that, when the Parliament is constitutionally complete, such a necessity could in any case exist. Can it be inferred, from what was considered as requisite at a time when there was no constitutional authority whatever (for the two Houses have none without the Royal sanction); can it, I repeat, be inferred, from the particular mode which it was deemed necessary to pursue at the time when the constitutional powers were in a state of mutilation, that the necessity of an adoption of a similar mode can exist when those powers are complete? And is it not evident that,



even amidst the fervour of patriotism which influenced the leading characters of that time, they had constitutional circumspection to a sufficient degree not to admit the principle of the right of the constituents to a re-election, for the purpose of considering the merits of any question which Parliament in its wisdom might deem it proper to deliberate upon? For, would it not have occurred to those who were empowered to act as they did, by that sole apparent right, that such right, if it had any constitutional foundation, ought to have been inserted in their Declaration of the Rights of the People? which Declaration has ever since been considered as one of the greatest supports of their (the People's) liberties.

A certain species of argument has been hinted at, that the separation of the power of the Parliament of Ireland from the right of exercising it, will go far in proving its

want of competency to accede to the proposed Union. Such an argument cannot certainly be constitutionally maintained ; for it, at least, goes to prove that the Constitution is so faulty that it does not supply remedies for particular exigences, which I cannot suppose it is the intention of the assertors of this opinion to attempt establishing. Nor do I think they will avow it ; for, if they did, it would lead them into the dilemma of being obliged to contend for a revolution. If the Constitution of these Countries has placed a power where there is no right for it to be exercised, it has, to say the least, fostered the viper of its own destruction. I shall, therefore, take no farther notice of this argument, as it is not constitutionally to be supported, and as it would oblige me to deviate from that line I have observed in these Considerations, were I to enter into a farther refutation of it.

If then there is no ascertaining the boundaries of the power of Parliament, if there is no control over it, as to the questions which the deliberative parts of it may think proper to discuss, except the mutual checks of its component parts upon each other, and the regulations of its own establishing, which itself may rescind, then to what is Parliament not constitutionally competent? Those who argue the want of competency in the Irish Parliament to accede to what is at most no more than a removal of the Seat of the Legislature, and a Parliamentary Reform, cannot maintain its power to enact what is generally termed the Catholic Emancipation; the Bill of Rights having enjoined a declaration from the Sovereign, at his coronation, which must be superseded before that could take place. Surely then if the Parliament has such power of supercession vested in it, it also possesses a

sufficient power for the other purpose, and has that competency for which I am arguing. With what shew of reason then can it be contended, that though Parliament does possess a power to supersede what was enacted by that very charter which confirmed its own rights, that it does not possess power sufficient to assent to the Union? Is not such an argument the maintenance of a paradox?

I have, in a preceding part of these Considerations, instanced the proceedings of the two Houses upon the abdication of King James the Second, in order to draw an inference, that if the two Houses considered themselves competent to what they then did, that the Constitution, in its complete state, must certainly possess the same or a greater competency. And, as a farther proof of it, we find, that on the restoration of King Charles the Second, that the then Parliament



confirmed its own authority, and its powers, although it had not been constitutionally assembled. And this also goes to a farther proof, if any appears to be necessary, of the independence of the representative, as to his constituents; otherwise would it not have occurred to that Parliament, that it was necessary that such constituents should be consulted, in order that they might return representatives, who were constitutionally competent to enact those laws, which they afterwards did. In fine, if it is asserted, that the Three Estates are not competent to accede to the proposed Union, such assertion goes to annul those proceedings, which in their consequences have been the foundation and preservation of our liberties; as it denies the power of Parliament to make any final arrangement whatever.

The Union of Scotland and England, as to precedent, might certainly be referred to

upon this occasion. For those who deny the power of the present Parliament of Ireland to accede to the Union, assert, by implication, that the Union with Scotland was unconstitutional, and in consequence, that every act passed by the British Parliament, since the time of its taking place, must be null and invalid, as the forty-five Members of the House of Commons from that Country, and the sixteen Peers, have had a share in the passing of those acts which they were not constitutionally intitled to. I must then confess I do not see how the argument, asserting that the Parliament is incompetent, can be supported. There can be no necessity for a recurrence to the opinion of the People, as the independence of their representatives, which I have in a former part of these Considerations discussed, renders them constitutionally competent without it. In what then does this want of competency consist? Surely not in a deficiency of precedent to

exercise the power vested in them ; for we see that the exercise of a power, infinitely greater on the part of Parliament, has been the means of securing our liberties ; therefore to deny, that such power does exist, or to assert that there is no right to exercise it, is to argue, that those very securities of our liberties are unconstitutional.

It would be a misconception of my intentions, and a perversion of my arguments, should it be supposed, from what I have advanced in support of the independence of the representatives, as to their constituents, that I also meant to advance arguments in support of principles that deny the People that proper proportion of influence in the administration of the government of the Country, which they derive from our admirable Constitution. I have, in the course of these Considerations, studiously avoided what might be construed into a notice of,



or reply to, those arguments that have their foundation in the consideration of that Constitution as faulty. My only aim being to prove, that, as the Constitution now stands, the Parliament of Ireland is competent to accede to the Union.

I am aware that the arguments I have used would admit of considerable dilatation, and am satisfied that, in abler hands, they might be placed in many more convincing points of view. The former I have purposely avoided, but should the publication of these Considerations occasion the latter, it will be more useful than I had any reason to hope.



**FINIS.**

